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17 UNITED STATES DISTRICT COURT
18 SOUTHERN DISTRICT OF CALIFORNIA
19

21 In Re SONY VAIO COMPUTER
22 NOTEBOOK TRACKPAD LITIGATION

Case No. 09-CV-2109 AJB (MDD)

23 **JOINT MOTION FOR**
24 **DETERMINATION OF DISCOVERY**
25 **DISPUTE – INSPECTION OF**
26 **PLAINTIFF’S SONY VAIO**
27 **NOTEBOOK COMPUTER**

25 Judge: Hon. Mitchell D. Dembin
26 Courtroom: D

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, CivLR 26.1, and the Honorable Mitchell D. Dembin's Chamber Rules, plaintiff Christina Egner ("Plaintiff") and defendants Sony Electronics, Inc. ("Sony") and Best Buy Stores, L.P. ("Best Buy") (collectively "Defendants") submit the following joint motion for determination of discovery dispute.

I. DISPUTED DISCOVERY REQUEST

On June 16, 2011, Sony served its First Set of Requests for Production on Plaintiff. (*See* Declaration of Bradley A. Lebow in Support of Joint Motion for Determination of Discovery Dispute ("Lebow Decl."), Ex. A.) The discovery request at issue is Request for Production No. 79, which states:

REQUEST FOR PRODUCTION NO. 79:

YOUR VAIO notebook computer(s) and any peripheral computer devices YOU have used with YOUR VAIO notebook computer(s), to be produced for physical inspection and forensic imaging at the offices of its counsel, Cooley LLP, 4401 Eastgate Mall, San Diego, California 92121-1909.¹

On August 10, 2011, Plaintiff served her responses and objections to Sony's First Set of Requests for Production. In response to Request for Production No. 79, Plaintiff stated:

RESPONSE TO REQUEST FOR PRODUCTION NO. 79:

Plaintiff incorporates by reference its General Objections. Plaintiff objects to this request because it seeks information protected by the attorney-client privilege and work-product doctrine. Plaintiff further objects to this request as unduly burdensome and the Request is intended to harass Plaintiff. Subject to and without waiving the forgoing, Plaintiff is willing to meet and confer concerning terms for inspection of Plaintiff's computer.

(Lebow Decl., Ex. B.)

On August 21, 2012, Sony and Best Buy sent plaintiff Egner a proposed protocol for inspection of Plaintiff's computer by Defendants' hardware and software consultants and a Sony technician. (Lebow Decl., Ex. D.) Defendants' proposed inspection protocol entails three parts: (1) hardware inspection detailed in the section entitled "PROTOCOL FOR OBSERVATION

¹ On September 25, 2012, Best Buy served its First Set of Requests for Production on Plaintiff, which included a nearly identical request. (Lebow Decl., Ex. C.)

1 AND INVESTIGATION OF TOUCHPAD” (the “Hardware Inspection”); (2) software forensics
2 inspection of the computer’s settings, registry files, configuration, etc., detailed in the section
3 entitled “PROTOCOL FOR FORENSIC IMAGING” under paragraphs 1-3 and 6-10 of the
4 “Forensic Scope” (the “Software Inspection – Part 1”); and (3) software forensics search for user
5 created files detailed in the section entitled “PROTOCOL FOR FORENSIC IMAGING” under
6 sections 4, 5, and 11 of the “Forensic Scope,” as well as the attachments entitled, “Key Search
7 Terms” and “Reporting.” (the “Software Inspection – Part 2”). (*Id.*) In that same
8 correspondence, Defendants also provided dates of availability for the computer inspection.

9 As to the Hardware Inspection, Plaintiff previously indicated that she will permit the
10 inspection under the proposed protocol, subject to first confirming with her consultant that the
11 procedures regarding the disassembly and re-assembly of the notebook computer are agreeable.
12 Plaintiff has yet to provide confirmation regarding the Hardware Inspection disassembly and
13 reassembly process, or any proposed dates for the computer inspection. As to the Software
14 Inspection – Part 1, Plaintiff has also agreed in principle to it, again though, subject to confirming
15 with her consultant, and further subject to Sony first advising what, if any, records it has
16 regarding the notebook computer’s software, systems, or settings from its pre-litigation limited
17 warranty servicing of Plaintiff’s notebook computer. Last, as to the Software Inspection – Part 2,
18 Plaintiff has stated that she will not agree to this aspect of the proposed protocol, and Plaintiff
19 will not agree to conduct her own forensic imaging and search for documents and things as
20 outlined in the proposed protocol. As a result of these outstanding issues, Plaintiff has continued
21 to withhold her computer from Defendants for inspection.

22 **II. PARTIES’ INTRODUCTORY STATEMENTS**

23 **A. Defendants’ Statement Concerning Why This Relevant Discovery Must Be** 24 **Produced**

25 This action is an alleged product defect case, and it puts Plaintiff, her “product,” and its
26 performance squarely at issue. Specifically, Plaintiff alleges in the operative amended
27 consolidated complaint that “Sony manufactured, marketed and sold VAIO Notebooks with
28 defective trackpad input devices.” (Am. Consol. Compl. [Dkt. No. 49], at ¶2.) Plaintiff further

1 alleges that “Sony VAIO Notebooks are defectively designed and manufactured because the
2 trackpad component can cause the onscreen cursor to: (a) track in reverse, *e.g.* the cursor moves
3 in a direction opposite to the user’s input; (b) freeze or fail to register user input; or (c) engage in
4 erratic behavior, *e.g.* randomly open and close windows and programs (the ‘Defect’).” (*Id.*)
5 Plaintiff asserts that she purchased a Sony VAIO notebook computer with a series and model
6 number of VGN-NW240F/P from Best Buy and that it is defective. (*Id.* at ¶8.) Plaintiff asserts
7 her claims individually and on behalf of a putative class of all persons “who purchased defective
8 notebook computers manufactured by Sony...during the period January 1, 2007 through the
9 present (the ‘Class Period’). (*Id.* at ¶2.) Plaintiff now objects to producing her computer for
10 examination.

11 As is standard practice and is to be expected in a product defect case styled as a
12 nationwide class action, Defendants seek – and have been seeking for almost two months – to
13 inspect the allegedly defective product before taking Plaintiff’s deposition. Plaintiff has yet to
14 produce the computer at issue for inspection and evaluation. Although Plaintiff initially agreed –
15 as she must – that Defendants are entitled to inspect her notebook computer because she is the
16 named plaintiff of this putative class action and because she contends the computer is defective,
17 Plaintiff has nevertheless refused to make it available for a reasonable inspection. Moreover, she
18 seeks to unreasonably limit the scope of inspection. In order for Defendants to reasonably
19 analyze and set forth their defenses to Plaintiff’s claims, it is absolutely critical that Defendants
20 have a reasonable opportunity to determine who has used the computer, how the computer has
21 been used, when the computer has been used, and what the computer has been used for, not only
22 since the time Plaintiff purchased the computer, but more importantly, since the time the
23 computer was last in Sony’s possession and since the time Plaintiff filed this action. Only a
24 proper examination, as proposed by Defendants, will shed light and provide actual evidence as to
25 whether the computer is operating properly and whether it has been appropriately maintained and
26 used by Plaintiff.² Because examination is necessary and Plaintiff’s grounds for delaying and

27 ² Obviously, if Defendants are not given the opportunity to perform an examination on the
28 computer as it was at the time this action was filed, whether because examination is refused or if

1 limiting the inspection are without support in logic or law, Defendants respectfully request that
2 Plaintiff be ordered to produce the notebook computer for inspection in San Diego, California
3 within 14 days, at a date and time convenient for Defendants.

4 As set forth in her discovery response above, Plaintiff agreed to produce her computer for
5 inspection, but desired to meet and confer regarding the protocol for such inspection.
6 Accordingly, Defendants devoted substantial time and effort to develop a proposed inspection
7 protocol that was appropriate in scope under the circumstances of this case and that included
8 safeguards for potentially private or privileged information. Defendants proposed the protocol to
9 Plaintiff on August 21, 2012, seeking to conduct an inspection of the computer the week of
10 September 24, 2012. Plaintiff responded on September 6, 2012 by refusing to submit to the
11 inspection and has continued to unreasonably delay proceedings ever since.

12 As an initial matter, it is beyond dispute that Plaintiff's VAIO notebook computer is
13 relevant under Rule 26 and that Defendants have the right to inspect it under Rule 34.
14 Regardless, Plaintiff did not object to the inspection on relevance grounds, and any such objection
15 therefore has been waived.

16 Plaintiff's central argument against the inspection is that Defendants already have "ample
17 evidence" as to the alleged trackpad issue because Plaintiff alleged the existence of a defect; Sony
18 performed pre-litigation, limited warranty servicing; and other Sony computers had trackpad
19 "issues." This argument is specious. First, Plaintiff's allegations regarding an alleged trackpad
20 issue are not immune to evidentiary proof. Second, a pre-litigation, limited warranty servicing is
21 vastly different in purpose and scope than a expert inspection during litigation. Regardless, Best
22 Buy has never had the opportunity to inspect her computer. Moreover, contrary to Plaintiff's
23 assertion, Sony's last limited warranty servicing of her computer confirmed that her computer
24 exhibited *no* trackpad issue. As such, Defendants are entitled to inspect her computer now for the
25 purposes of litigation. Finally, other customer complaints about various trackpad issues do not
26 establish that Plaintiff's computer had the trackpad issue as alleged, or that this issue was

27
28 the computer itself has been improperly modified or altered, Defendants may have some
significant additional defenses, including spoliation claims.

1 identical to every other alleged trackpad issue experienced by customers. And a “Service
2 Bulletins” does not serve as acknowledgement of a trackpad “defect;” here, the relevant “Service
3 Bulletin” describes a potential issue which may “spontaneously” arise, and the rate of repair for
4 touchpad issues on Plaintiff’s series of VAIO computer was infinitesimal. (*See* Nov. 22, 2011
5 Decl. of P. Stewart [Dkt. No. 95-1], at ¶¶ 14.)

6 As to the Hardware Inspection, based on the parties’ meet and confer efforts, Defendants
7 understood that Plaintiff did not object to the Hardware Inspection, but refused to allow it until
8 she first confirmed with her consultant that the disassembly and reassembly of the notebook
9 computer will not cause “damage” to it.³ Plaintiff’s concerns are unfounded and simply a delay
10 tactic. First, Defendants crafted their protocol with input from their consultants and in
11 accordance with Sony’s internal documents (already produced to Plaintiff in this action) that
12 constitute instructions to Sony’s own technicians regarding how to disassemble and reassemble
13 the NW series Sony VAIO notebook computer. Plaintiff’s concerns about improper disassembly
14 and reassembly are purely speculative. Second, Defendants provided the Hardware Inspection
15 protocol to Plaintiff over six weeks ago. Plaintiff has yet to provide the purported confirmation
16 from her consultant or make any counterproposal on the protocol’s disassembly and reassembly
17 process, despite Plaintiff’s counsel’s representations to do so over two weeks ago. Defendants
18 desire to move this case along in an effort to appropriately meet the Court’s scheduling in order,
19 and Plaintiff’s unreasonable and inexplicable delays should not be tolerated any longer.⁴ Third,

20
21 ³ In this Joint Motion, Plaintiff asserts that she is willing to agree to the Hardware Inspection if
22 Sony would allow an “independent party” to conduct the inspection, as opposed to “Sony’s
23 technicians.” As noted, this statement is at odds with Defendants’ understanding of Plaintiff’s
24 current position. Moreover, in the proposed protocol and during the meet and confer process,
25 Defendants always proposed that their experts – and not a “Sony technician” – would be
26 conducting the inspection. (*See* Lebow Decl., Ex. D.) The proposed protocol only notes that a
27 “Sony representative with experience will re-assemble the laptop.” (*Id.*) Further, Plaintiff has
28 never even proposed an “independent party” to perform the inspection. Regardless, for the
reasons stated above, Plaintiff’s proposal for using an “independent party” is entirely
unnecessary.

⁴ Plaintiff indicated to the Court at the last status conference that an extension of the current
Scheduling Order may be necessary. But for Plaintiff’s stonewalling and gamesmanship, there is
no reason to delay this already three year old case any further.

1 Plaintiff alleges that her notebook computer is already “defective” and that the defect rendered
2 her notebook computer allegedly “useless” and caused it to “no longer function.” (Am. Consol.
3 Compl. [Dkt. No. 49], at ¶¶ 1-3, 27, 51-72.) Further, Defendants have agreed in the meet and
4 confer process that Plaintiff’s consultant may be present for the inspection, and the protocol
5 provides that the entire process will be photo-documented. Accordingly, any speculative damage
6 concern will not result in further harm to the notebook computer or prejudice to any party. Last,
7 regardless of Plaintiff’s speculative concerns, her computer will have to be disassembled and
8 reassembled to inspect the internal trackpad components. This is unavoidable.

9 As to the Software Inspection – Part 2, it is relevant and necessary to the claims and
10 defenses in this case. Defendants contend that Plaintiff’s alleged issue with the trackpad was not
11 a hardware issue for which they are responsible, but rather a software, systems, user, or settings
12 issue, which is not covered under the limited warranty. Plaintiff has not stated an objection to the
13 Software Inspection Part 1, but is delaying such an inspection until (i) Sony first advises her what,
14 if any, records it has regarding the notebook computer’s software, settings, or settings from its
15 pre-litigation, limited warranty servicing of Plaintiff’s notebook computer; and (ii) confirmation
16 from her consultant that the protocol is acceptable. Plaintiff’s grounds for delaying the inspection
17 are not valid for various reasons. Sony believes that Plaintiff’s computer is not defective and was
18 not defective after servicing, and has agreed to produce whatever records it has regarding
19 Plaintiff’s notebook computer in due course. The purposes of this inspection for litigation
20 purposes are clearly different from the purposes of any pre-litigation limited warranty service that
21 Sony conducted, and which revealed no issue with Plaintiff’s trackpad. Regardless, Best Buy has
22 never had a chance to inspect the notebook computer, a crucial detail that Plaintiff ignores.
23 Again, Plaintiff’s delays should no longer be able to block this critical and necessary inspection.

24 Last, Plaintiff objects to the Software Inspection – Part 2 on overbreadth, privacy, and
25 privileged grounds. Plaintiff’s objections are inappropriate and should be overruled. Defendants
26 proposed a limited list of 13 search terms (Trackp*, Touchp*, Track pad, Touch pad, Pointer,
27 Curser, Mouse, Defect, Issue, Problem, Freez*, Fail*, and Erratic) that correspond with the
28 requests for production that Sony propounded and that Plaintiff agreed to produce documents in

1 response to. Importantly, Plaintiff has not produced any documents from her computer. As
2 Defendant's will be taking a forensic image of Plaintiff's computer in any event for Software
3 Inspection – Part 1, Defendants proposed also searching her emails and user created files for
4 responsive documents. The search terms are narrowly tailored to avoid potentially private or
5 privileged documents. But as an additional protection, Defendants built in safeguards for
6 potentially privileged documents in the protocol, and have agreed that Plaintiff may designate all
7 emails and user created documents as "CONFIDENTIAL" under the strong two-tiered protective
8 order entered in this case.

9 In sum, the proposed examination of Plaintiff's computer is not only reasonable, but
10 necessary, and Plaintiff should be ordered to produce her computer for inspection in San Diego,
11 California by Defendants' consultants and Sony personnel immediately so that Defendants can
12 move forward with Plaintiff's deposition, and move forward to appropriately complete discovery
13 in a time frame consistent with the Court's scheduling order. Defendants' proposed protocol
14 should be adopted in its entirety.

15 **B. Plaintiff's Statement Regarding Basis for Objections**

16 On June 16, 2011, Sony served Plaintiff with its First Set of Requests for Production and
17 Other Things ("RFP"). RFP No. 79 demanded that Plaintiff produce her Sony VAIO notebook
18 computer and any peripheral computer devices for physical inspection and forensic imaging by
19 Sony. Although Plaintiff did not agree outright to the exam she did agree to meet and confer
20 regarding the scope of the requested exam.⁵ Declaration of Jennifer MacPherson ("MacPherson
21 Decl.") in Response to Joint Motion for Determination of Discovery Dispute ("Joint Motion") at
22 ¶ 3. Over a year later, on August 21, 2012, Sony presented Plaintiff for the first time with a
23 proposed Protocol for Observation and Investigation of Touchpad ("Exam Protocol"). *Id.* at ¶ 4
24 and Exhibit 1 (Exam Protocol). Sony's Exam Protocol is not reasonable.

25 As explained below, Plaintiff objects to the Exam Protocol as seeking information that is
26

27 ⁵ Notably, contrary to Sony's assertion, in addition to plaintiff's specific objections to RFP No.
28 79, her general objections included an objection on grounds of relevancy. MacPherson Decl.,
Exh.4.

1 irrelevant to Plaintiff's claims and Sony's defenses, duplicative of other discovery, and as being
2 overbroad, unduly burdensome and harassing. In addition, the Exam Protocol infringes on
3 Plaintiff's right to privacy in association with her personal files - which contain highly sensitive
4 medical, family, and financial information—and seeks information that is protected by the
5 attorney-client privilege and attorney work-product doctrine.

6 Finally, before *any* exam can move forward, Sony *must* produce all of its internal
7 documents and materials concerning the multiple previous repair attempts Sony performed on this
8 laptop while in its possession at Sony's headquarters, because Sony's own documents say it twice
9 "diagnosed and extensively tested by a team of factory trained service technicians." Exhibit 3 to
10 MacPherson declaration. Plaintiffs have demanded these tests and diagnoses be immediately
11 produced. Sony has not produced the documents.

12 Sony's Exam Protocol

13 The basis of Plaintiff's objection concerns the scope of the Exam Protocol. In addition to
14 a detailed visual inspection of the exterior and interior of Plaintiff's laptop ("Hardware
15 Inspection")⁶, Sony intends to access Windows to assess operation of the touchpad in order to
16 "[d]ocument any anomalous behavior, such as track in reverse, freeze or fail to register input, or
17 randomly open or close windows" ("Software Inspection"),⁷ as well as disassemble the entire
18 computer in order to inspect and photograph the touchpad and the componentry that controls the
19 touchpad ("Disassembly").⁸ This portion of the exam is to be performed by a Sony technician.

20 Sony also intends to forensically image and examine Plaintiff's notebook ("Forensic
21 Exam").⁹ As part of the Forensic Exam Sony will, among other things: (1) document all
22 "Windows accounts, including all administrator accounts, system accounts and user accounts,"
23 including information for each account such as when the account was created and who last used

24 ⁶ See MacPherson Decl., Exh. 1 ("Exam Protocol") at ¶¶ 1-3, 5-6 ("Initial visual inspection and
25 evaluation") and "Forensic Scope" at ¶ 1 (Sony will document make, model, serial number of
laptop and photograph exterior of laptop).

26 ⁷ *Id.* at ¶ 4 ("Initial visual inspection and evaluation").

27 ⁸ *Id.* at ¶¶ 7-30 and "Forensic Scope" at ¶ 2 (Sony to photograph hard drive).

28 ⁹ *Id.* ("Protocol for Forensic Imaging") at ¶¶ 1-11 and ("Forensic Scope") at ¶¶ 3-11.

1 the account, (2) use “key search terms” to “locate, identify and document any and all file(s) which
2 contain a match” in all software (e.g., Word, Excel, Power Point, Access, Corel Word Perfect
3 etc.), deleted files, and e-mails, (3) “[i]nvestigate and document all encrypted and/or password
4 protected documents that are unable to be searched without retrieving the password,” and (4)
5 search and document Plaintiff’s internet history, including “all websites accessed.”

6 Visual Hardware Inspection and Disassembly

7 During the meet and confer process Plaintiff agreed to Sony’s conducting the proposed
8 Hardware Inspection, as well as the Disassembly, if Sony agreed to allow an independent party,
9 rather than a Sony technician, to conduct these exams. MacPherson Decl. at ¶ 18. Plaintiff
10 believes an independent technician is necessary to avoid the possibility of any advertent or
11 inadvertent manipulation by a representative of Sony that may obscure manifestation of the
12 defect. Sony refused. *Id.*

13 Software Inspection

14 In addition, Plaintiff agreed to the Software Inspection upon Sony first providing her with
15 all records in Sony’s possession regarding its four attempts to repair Plaintiff’s computer.
16 MacPherson Decl. at ¶ 19. The purpose of this request is to determine the extent to which the
17 proposed exam is necessary, particularly where Sony has ample evidence in its possession
18 regarding existence of the defect in the Sony VAIO notebooks, including Sony service bulletins.
19 *Id.* at ¶¶ 8-16.

20 Sony explains the Software Inspection is necessary because “Sony believes that Plaintiff’s
21 computer is not defective and was not defective after servicing,” *supra*, p. 4. However, an
22 examination of Plaintiff’s computer is not necessary to establish it manifested the alleged
23 defect.¹⁰ Plaintiff communicated directly with Sony on at least nine different occasions regarding

24
25 ¹⁰ Notably, the alleged defect is not unique to Plaintiff’s computer. Sony’s internal documents
26 reveal similar problems experienced by other users of Sony VAIO notebooks. Compl. ¶ 23; SEL-
27 0000397 to 398, (Sony service bulletin regarding touchpad issues), attached as Exhibit 2 to
28 MacPherson Declaration; SEL-0001259 to 1323 (Sony service records); SEL-0001574 to 1579
(Sony records logging calls from customers regarding problems with their Sony VAIO
keyboard/touchpad/mouse).

1 issues with her trackpad acting erratically, moving on its own or failing to move at all. Compl. ¶¶
2 53-58, 62; *see also* Plaintiff's Response to Sony's First Set of Interrogatories ("ROG"), No. 9,
3 attached as Exh. 5 to MacPherson Declaration. And Sony twice had Plaintiff's notebook in its
4 possession at its headquarters to review and examine the trackpad issue. Compl. ¶¶ 62, 66;
5 Response to ROG No. 9.

6 In addition, a Sony authorized onsite technician went to Plaintiff's home to try and resolve
7 the trackpad issue (even replacing her original trackpad) and witnessed the alleged defect.
8 Response to ROG No. 9. Further, Sony's work orders acknowledging repairs were made to
9 Plaintiff's computer indicate her computer was "diagnosed and extensively tested by a team of
10 factory trained service technicians." *See, e.g.*, EGNER 000006-7 and 12, attached as Exhibit 3 to
11 MacPherson Declaration. These records, in addition to Plaintiff's response to Sony's 83 RFPs and
12 15 ROGs, contain information sufficient to satisfy Sony's demand for a Hardware Inspection,
13 Disassembly and Software Inspection.¹¹ Further, these records *must* be produced prior to *any*
14 inspection so the parties and the Court are informed about all the relevant changes Sony made to
15 the computer before returning it to plaintiff Egner. And the parties and the Court are entitled to
16 the results of Sony's "extensive" testing and diagnoses. This is basic to any inspection protocol, a
17 fact Sony well knows.

18 Forensic Exam

19 Further, during the parties meeting and conferring Sony refused to narrow the scope of its
20 overly broad Forensic Exam. MacPherson Decl. at ¶ 20. As such, Plaintiff cannot agree to the
21 exam as proposed. First, Plaintiff fails to understand how in a case involving an allegedly
22 defective trackpad, Compl. at ¶ 2, a forensic exam and imaging of her hard drive is relevant, let
23 alone one designed to search her personal user accounts, computer files, emails, internet search
24 history, and "all encrypted and/or password protected documents that are unable to be searched
25

26 ¹¹ To the extent Sony's examination is intended to determine whether Plaintiff somehow damaged
27 her laptop by, for example, dropping it or exposing it to water, Sony previously asked Plaintiff to
28 describe in detail any "damage, internal, external, cosmetic or otherwise" to her notebook as part
of ROG No. 14, to which Plaintiff responded that she "is unaware of any such damage."

1 without retrieving the password.” MacPherson Decl., Exh. 1 at ¶ 10 (“Forensic Scope”). Second,
2 most of the information Sony seeks to obtain via the Forensic Exam was previously requested by
3 Sony as part of its 83 RFPs and 15 ROGs. To the extent relevant discovery exists, at least in the
4 form of information contained in software (e.g., MS Word, Excel, Power Point, etc.) and/or
5 emails, Plaintiff searched for and produced (to the extent it existed) documents and information
6 responsive to Sony’s discovery requests.

7 For the reasons stated above, Plaintiff objects to the exam proposed by Sony. And Sony
8 has failed to sufficiently support the basis for its compelling an examination of Plaintiff’s
9 notebook. Before any exam can move forward, Sony must produce all of its internal documents
10 and test results from its multiple previous repair attempts, including two repair attempts at Sony’s
11 headquarters here in San Diego. Plaintiffs have demanded these documents be produced on
12 multiple occasions. Sony thus far has not produced them.

13 **III. MEET AND CONFER CERTIFICATION**

14 In compliance with this Court’s rules, counsel for Sony and counsel for Plaintiff met and
15 conferred in person on Tuesday, September 25, 2012 (with counsel for Best Buy participating by
16 telephone), and attempted in good faith to resolve this discovery dispute. (Lebow Decl., ¶ 8.)
17 Prior to September 25, 2012 and since that date, the parties also engaged meet and confer efforts
18 by telephone, e-mail, and letters to resolve this discovery dispute. (*Id.* at ¶ 6, 7, 9.) Despite their
19 good faith efforts, the parties were not able to resolve this dispute.

1 Dated: October 22, 2012

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1 **CERTIFICATION REGARDING ELECTRONIC SIGNATURES**

2 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and
3 Procedures Manual, I hereby certify that the content of this document is acceptable to Mr. John A
4 Lowther, counsel for Plaintiff, and Ms. Elizabeth D. Le, counsel for Best Buy, and that I have
5 obtained Ms. Le and Mr. Lowther's authorization to affix their electronic signature to this
6 document.

7 Dated: October 22, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2012, I electronically filed the following documents

**JOINT MOTION FOR DETERMINATION OF DISCOVERY DISPUTE –
INSPECTION OF PLAINTIFF’S SONY VAIO NOTEBOOK COMPUTER**

with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record at the following listed email addresses:

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1 This document was served on all counsel who are deemed to have consented to electronic service.
2 Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5, all other counsel of
3 record not deemed to have consented to electronic service were served with a true and correct
4 copy of this document via U.S. First Class Mail. However, the undersigned is not aware of
5 anyone who has not consented to electronic service.



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